

REMARKS

FORMAL MATTERS:

Claim 71 is now pending in this application.

Claims 1-70 and 73-75 were previously canceled. Claim 72 is canceled here without prejudice.

Claim 71 has been amended to more particularly point out and distinctly claim the invention.

The amendment to claim 71 is supported within the previously pending now canceled version of claim 72.

No new matter is added.

REJECTIONS UNDER 35 U.S.C. §103

Claims 71 and 72 were rejected under 35 U.S.C. §103 as unpatentable over St. Goar et al. in view of Wilson et al.

The rejection is traversed as applied and as it might be applied to the presently pending claims.

The Examiner has appreciated that St. Goar et al. do not disclose a fluid transport device of the type claimed within previous claim 71. Applicants have further amended claim 71 to incorporate the limitations contained within dependent claim 72. Thus, the claim is now further distinguished over either St. Goar et al. or Wilson et al. as taken alone or in combination with each other.

NON-ANALOGOUS ART

Initially, applicant points out that Wilson et al. is non-analogous art. Wilson et al. teaches an “angiographic injector system . . . for injecting radiographic contrast material” (see, for example, column 3, lines 65-66). Therefore, Wilson et al. is drawn to an apparatus used in medical imaging and is in no way attempting to disclose a system which is useful for repair of mitral valve annulus. Thus, Wilson et al. has been combined with St. Goar et al. only by utilizing applicant’s invention as a blueprint.

REFERENCES NOT OBVIOUSLY COMBINABLE

Furthermore, there is no motivation to combine St. Goar et al. and Wilson et al. Applicant can find no reason why one would combine an apparatus used in medical imaging (Wilson et al.) and an apparatus used in cardiac valve repair (St. Goar et al.).

In deciding the question of obviousness under 35 U.S.C. § 103, it is not realistic to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what a reference fairly suggests to one of ordinary skill in the art. Here, the device for injecting radiographic contrast material taught by Wilson et al. does not fairly suggest to one of ordinary skill in the art to use the components of that device with St. Goar which is directed to completely different technology.

The mere existence in the prior art of individual features of a claimed invention does not, without more, render that invention obvious within the meaning of § 103. There must be positive evidence that the bringing together of such features or steps would have been obvious to an ordinarily skilled person. Here, there is no such evidence and Wilson is not obviously combinable with St. Goar et al.

Applicant also points out that the presently claimed system includes the fluid transport device whereby fluid passes from the inlet through the inlet passage and through the lumen into the heart chamber “to maintain and intra-chamber pressure at a desired level.” Wilson et al. clearly is not designing any sort of device which would aid in maintaining “an intra-chamber pressure at a desired level” in that they are disclosing completely different technologies. However, with applicant’s invention maintaining the intra-chamber pressure at a desired level is important to carry out mitral valve annulus repair while the heart is beating. Neither Wilson et al. or St. Goar et al. disclose this concept which is an important feature of the claimed system because maintaining intra-chamber pressure at a desired level allows the procedure to be carried out while the heart is beating and facilitates the procedure for a surgeon. Such is not taught by St. Goar et al. or Wilson et al. as taken alone or in combination with each other.

Summarizing, claim 71 has been amended to incorporate limitations of now canceled dependent claim 72 and to more particularly point out and distinctly claim the invention. The rejection over the combination of St. Goar et al. and Wilson et al. is traversed as applied and as it might be applied to the amended claims. Wilson et al. is non-analogous art and has been combined with St. Goar et al. only by using applicant’s invention as a blueprint. In addition, there is no motivation to combine St. Goar et al. and Wilson et al. Even more, if the references are combined they do not teach a system as claimed

which maintains intra-chamber pressure at a desired level which facilitates the ability of a surgeon to carry out mitral valve annulus repair. In view of such reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

In the event minor issues remain unresolved the Examiner is respectfully requested to contact the undersigned attorney at the indicated telephone number to arrange for an interview to expedite disposition of this application.

In the event fees are due in connection with the filing of this document the Commissioner is authorized to charge such fees to our Deposit Account No. 50-0815, order number UOMB-001DIV.

Respectfully submitted,
BOZICEVIC, FIELD & FRANCIS LLP



Date: 9 October 2008

By: _____
Karl Bozicevic
Registration No. 28,807

BOZICEVIC, FIELD & FRANCIS LLP
1900 University Avenue, Suite 200
East Palo Alto, California 94303
Telephone: (650) 327-3400
Facsimile: (650) 327-3231